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16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 NARCONON FRESH START, a nonprofit
19 California Corporation,

20 Plaintiff,

21 vs.

22 RSUI INDEMNITY COMPANY,

23 Defendant.

Case No. 2:18-cv-08953-JAK-JEM

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
6 to enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to discovery
8 and that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles. The parties further acknowledge, as set forth in Section
11 12.3, below, that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation
17 of information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
19 how it is generated, stored or maintained) or tangible things that qualify for protection
20 under Federal Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
28 among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2 2.6 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
4 expert witness or as a consultant in this action.

5 2.7 House Counsel: attorneys who are employees of a party to this action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party
11 to this action but are retained to represent or advise a party to this action and have
12 appeared in this action on behalf of that party or are affiliated with a law firm which
13 has appeared on behalf of that party.

14 2.10 Party: any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this action.

19 2.12 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 2.13 Protected Material: any Disclosure or Discovery Material that is
24 designated as "CONFIDENTIAL."

25 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also (1) any information copied or extracted
2 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
3 Protected Material; and (3) any testimony, conversations, or presentations by Parties
4 or their Counsel that might reveal Protected Material. However, the protections
5 conferred by this Stipulation and Order do not cover the following information: (a)
6 any information that is in the public domain at the time of disclosure to a Receiving
7 Party or becomes part of the public domain after its disclosure to a Receiving Party as
8 a result of publication not involving a violation of this Order, including becoming part
9 of the public record through trial or otherwise; and (b) any information known to the
10 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
11 disclosure from a source who obtained the information lawfully and under no
12 obligation of confidentiality to the Designating Party. This Order does not govern the
13 use of Protected Material at trial.

14 4. DURATION

15 Once a case proceeds to trial, information that was designated as
16 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
17 as an exhibit at trial becomes public and will be presumptively available to all
18 members of the public, including the press, unless compelling reasons supported by
19 specific factual findings to proceed otherwise are made to the trial judge in advance of
20 the trial. See, Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1180 (9th
21 Cir. 2006) (distinguishing “good cause” showing for sealing documents produced in
22 discovery from “compelling reasons” standard when merits-related documents are part
23 of court record). Accordingly, the terms of this protective order do not extend beyond
24 the commencement of the trial.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify – so that other portions of the material, documents, items, or communications
4 for which protection is not warranted are not swept unjustifiably within the ambit of
5 this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber or retard the case development process or to
9 impose unnecessary expenses and burdens on other parties) expose the Designating
10 Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents,
21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
22 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
23 protected material. If only a portion or portions of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s)
25 (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which material it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
3 it wants copied and produced, the Producing Party must determine which documents,
4 or portions thereof, qualify for protection under this Order. Then, before producing the
5 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
6 to each page that contains Protected Material. If only a portion or portions of the
7 material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Designating Party identify on the record, before the close of the deposition,
12 hearing, or other proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary and for any
14 other tangible items, that the Producing Party affix in a prominent place on the
15 exterior of the container or containers in which the information or item is stored the
16 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
17 warrant protection, the Producing Party, to the extent practicable, shall identify the
18 protected portion(s).

19 5.3 Inadvertent Failures to Designate. If corrected within twenty (20) days,
20 an inadvertent failure to designate qualified information or items does not, standing
21 alone, waive the Designating Party’s right to secure protection under this Order for
22 such material. Upon correction of a designation within twenty (20) days, the
23 Receiving Party must make reasonable efforts to assure that the material is treated in
24 accordance with the provisions of this Order. If, however, such material is used in the
25 interim, for example as an exhibit in a deposition, it can no longer be designated as
26 “CONFIDENTIAL.”

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1 et. seq.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
9 the confidentiality designation by failing to file a motion to retain confidentiality as
10 described above, all parties shall continue to afford the material in question the level
11 of protection to which it is entitled under the Producing Party's designation until the
12 court rules on the challenge.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this case
16 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
17 Material may be disclosed only to the categories of persons and under the conditions
18 described in this Order. When the litigation has been terminated, a Receiving Party
19 must comply with the provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
26 only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
28 employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this litigation and who have signed the “Acknowledgment
2 and Agreement to Be Bound” that is attached hereto as Exhibit A;

3 (b) the officers, directors, and employees (including House Counsel) of the
4 Receiving Party to whom disclosure is reasonably necessary for this litigation and
5 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, mock
11 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the “Acknowledgment and Agreement to
16 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
17 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
18 reveal Protected Material must be separately bound by the court reporter and may not
19 be disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information.

22 (h) any mediator or settlement officer and their supporting personnel, mutually
23 agreed upon by any of the parties engaged in settlement discussions.

24 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
25 OTHER LITIGATION

26 If a Party is served with a subpoena or a court order issued in other litigation
27 that compels disclosure of any information or items designated in this action as
28 “CONFIDENTIAL,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or
5 order is subject to this Protective Order. Such notification shall include a copy of this
6 Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this
11 action as “CONFIDENTIAL” before a determination by the court from which the
12 subpoena or order issued, unless the Party has obtained the Designating Party’s
13 permission. The Designating Party shall bear the burden and expense of seeking
14 protection in that court of its confidential material – and nothing in these provisions
15 should be construed as authorizing or encouraging a Receiving Party in this action to
16 disobey a lawful directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
18 IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this action and designated as “CONFIDENTIAL.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections. No Party
24 can designate another Party’s document as “CONFIDENTIAL.”

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that
2 some or all of the information requested is subject to a confidentiality agreement with
3 a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this litigation, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and

7 (3) make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this court
9 within 14 days of receiving the notice and accompanying information, the Receiving
10 Party may produce the Non-Party's confidential information responsive to the
11 discovery request. If the Non-Party timely seeks a protective order, the Receiving
12 Party shall not produce any information in its possession or control that is subject to
13 the confidentiality agreement with the Non-Party before a determination by the court.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
15 of seeking protection in this court of its Protected Material.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
21 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
22 persons to whom unauthorized disclosures were made of all the terms of this Order,
23 and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties, within twenty (20)
28 business days of production, that certain inadvertently produced material is subject to

1 a claim of privilege or other protection, the obligations of the Receiving Parties are
2 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not
3 intended to modify whatever procedure may be established in an e-discovery order
4 that provides for production without prior privilege review. Pursuant to Federal Rule
5 of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
6 disclosure of a communication or information covered by the attorney-client privilege
7 or work product protection, the parties may incorporate their agreement in the
8 stipulated protective order submitted to the court.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected Material.
20 A Party that seeks to file under seal any Protected Material must comply with Civil
21 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
22 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
23 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
24 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
25 entitled to protection under the law. If a Receiving Party's request to file Protected
26 Material under seal pursuant to Civil Local Rule 79-5.2.2 is denied by the court, then
27 the Receiving Party may file the information in the public record pursuant to Civil
28 Local Rule 79-5.2.2 unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in paragraph
3 4, each Receiving Party must return all Protected Material to the Producing Party or
4 destroy such material. As used in this subdivision, "all Protected Material" includes
5 all copies, abstracts, compilations, summaries, and any other format reproducing or
6 capturing any of the Protected Material. Whether the Protected Material is returned or
7 destroyed, the Receiving Party must submit a written certification to the Producing
8 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
9 deadline that (1) identifies (by category, where appropriate) all the Protected Material
10 that was returned or destroyed and (2) affirms that the Receiving Party has not
11 retained any copies, abstracts, compilations, summaries or any other format
12 reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and
16 expert work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION).

19
20 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

21
22 DATED: March 18, 2019

LAW OFFICES OF MICHAEL A. SOTER,
APC

23
24
25 By: /s/ Michael A. Soter

26 Michael A. Soter
27 Attorney for Plaintiff Narconon Fresh Start
28

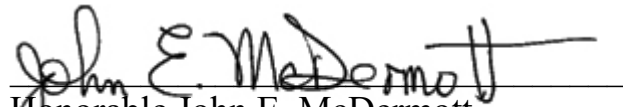
MUSICK, PEELER & GARRETT, LLP

DATED: March 22, 2019

By: /s/Laura Kim
Laura Kim
Attorney for Defendant RSUI Indemnity
Company

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 09, 2019


Honorable John E. McDermott
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of *Narconon Fresh Start v. RSUI Indemnity Company*, Case No
8 2:18- cv-08953. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or
21 any proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed:
25 _____

26 Printed name: _____

27
28 Signature: _____